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 7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 **CV - 11 3089**

11 IRMA RAMIREZ and DAREN
 HEATHERLY,

12 Plaintiffs,

13 v.

14 CASA SANCHEZ RESTAURANT;
 15 MARTHA SANCHEZ; ROBERT C.
 16 SANCHEZ; and FANTE, INC., a California
 Corporation dba CASA SANCHEZ
 17 FOODS,

18 Defendants.
 19

) **CASE NO.**
) **Civil Rights**
)

) **COMPLAINT FOR INJUNCTIVE RELIEF**
) **AND DAMAGES:**

) **1st CAUSE OF ACTION:** For Denial of Access
) by a Public Accommodation in Violation of the
) Americans with Disabilities Act of 1990 (42
) U.S.C. §12101, *et seq.*)

) **2nd CAUSE OF ACTION:** For Denial of Full
) and Equal Access in Violation of California
) Civil Code §§54, 54.1 and 54.3

) **3rd CAUSE OF ACTION:** For Denial of
) Accessible Sanitary Facilities in Violation of
) California Health & Safety Code §19955, *et seq.*

) **4th CAUSE OF ACTION:** For Denial of
) Access to Full and Equal Accommodations,
) Advantages, Facilities, Privileges and/or
) Services in Violation of California Civil Code
) §51, *et seq.* (The Unruh Civil Rights Act)

24 **DEMAND FOR JURY**

1 Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY, each an individual,
2 complains of defendants CASA SANCHEZ RESTAURANT; MARTHA SANCHEZ; ROBERT
3 C. SANCHEZ; and FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS and
4 alleges as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical
7 disabilities, of which class plaintiff IRMA RAMIREZ, plaintiff DAREN HEATHERLY and the
8 disability community are members, for failure to remove architectural barriers structural in nature
9 at defendants' CASA SANCHEZ, a place of public accommodation, thereby discriminatorily
10 denying each plaintiff and the class of other similarly situated persons with physical disabilities
11 access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the
12 goods, facilities, services, and accommodations thereof. Each plaintiff seeks injunctive relief and
13 damages pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*;
14 California Civil Code §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et*
15 *seq.*

16 2. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a person
17 with physical disabilities who, on or about , was an invitee, guest, patron, customer at
18 defendants' CASA SANCHEZ RESTAURANT, in the City of San Francisco, California. At
19 said times and place, defendants failed to provide proper legal access to the restaurant, which is a
20 "public accommodation" and/or a "public facility" including, but not limited to the entrance,
21 counter, men's restroom and women's restroom. The denial of access was in violation of both
22 federal and California legal requirements, and plaintiff IRMA RAMIREZ and plaintiff DAREN
23 HEATHERLY each suffered violation of his/her civil rights to full and equal access, and was
24 embarrassed and humiliated.

1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel
 6 California law, whose goals are closely tied with the ADA, including but not limited to violations
 7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
 8 *seq.*, including §19959; California Building Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
 10 founded on the facts that the real property which is the subject of this action is located at/near
 11 2778 24TH Street, in the City and County of San Francisco, State of California, and that plaintiffs'
 12 causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a
 15 "physically handicapped person", a "physically disabled person", and a "person with physical
 16 disabilities" (hereinafter the terms "physically disabled", "physically handicapped" and "person
 17 with physical disabilities" are used interchangeably, as these words have similar or identical
 18 common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety
 19 Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51,
 20 51.5, 54 and 54.1, and other statutory measures refer to protection of the rights of "physically
 21 disabled persons"). Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a
 22 "person with physical disabilities", as defined by all applicable California and United States
 23 laws. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a "person with
 24 physical disabilities", as defined by all applicable California and United States laws. Plaintiff
 25 IRMA RAMIREZ suffers from Post-Polio syndrome. Plaintiff IRMA RAMIREZ relies
 26 primarily on a wheelchair to travel about in public. Plaintiff DAREN HEATHERLY is afflicted
 27 with Multiple Sclerosis and a left hip replacement. Plaintiff DAREN HEATHERLY relies
 28 primarily on a wheelchair to travel about in public.

Consequently, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

6. Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC. (hereinafter alternatively collectively referred to as "defendants") are the owners and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as CASA SANCHEZ, located at/near 2778 24TH Street, San Francisco, California, or of the building and/or buildings which constitute said public accommodation.

7. At all times relevant to this complaint, defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC., own and operate in joint venture the subject CASA SANCHEZ as a public accommodation. This business is open to the general public and conducts business therein. The business is a "public accommodation" or "public facility" subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

8. At all times relevant to this complaint, defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC. are jointly and severally responsible to identify and remove architectural barriers at the subject CASA SANCHEZ pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

§ 36.201 General

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

PRELIMINARY FACTUAL ALLEGATIONS:

9. CASA SANCHEZ is a restaurant, located at/near 2778 24TH Street, San Francisco, California 94110. CASA SANCHEZ, its entrance, counter, men's restroom and women's restroom, and its other facilities are each a "place of public accommodation or facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions," each of which has subjected CASA SANCHEZ and each of its facilities, its entrance, counter, men's restroom and women's restroom to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

10. On or about the year of 2000, defendants' and each of them purchased and/or took possessory control of the premises now known as CASA SANCHEZ. At all times prior thereto, defendants' and each of them were aware of their obligation prior to the close of escrow, or upon taking possessory interest that public accommodations had a duty to identify and remove architectural barriers and were aware that CASA SANCHEZ was not accessible to the disabled. Nevertheless, defendants' and each of them, operated CASA SANCHEZ as though it was accessible.

11. At all times stated herein, defendants' and each of them with the knowledge that each of them had a continuing obligation to identify and remove architectural barriers where it was readily achievable to do so, failed to adopt a transition plan to provide better and/or compliant access to the subject accommodation.

12. At all times referred to herein and continuing to the present time, defendants, and each of them, advertised, publicized and held out the CASA SANCHEZ as being handicapped accessible and handicapped usable.

13. On or about MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC., plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each was an invitee and guest at the subject CASA SANCHEZ, for purposes of food and drink. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ are husband and wife.

1 14. On or about January 20, 2011, April 5, 2011, plaintiff IRMA RAMIREZ and
2 plaintiff DAREN HEATHERLY had needed to use one of the two (2) unisex restrooms. Both
3 plaintiff IRMA RAMIREZ and DAREN HEATHERLY encountered restrooms that were not
4 accessible and usable (one restroom had no grab bars and the lavatory was in a cabinet, the other
5 restroom had no rear grab bar, a twenty-four (24) inch side grab bar and the lavatory was in a
6 cabinet).

7 15. On or about February 3, 2011, plaintiff IRMA RAMIREZ wrote both the landlord
8 and tenant about the access issues. Plaintiff IRMA RAMIREZ wrote:

9 "Si desea que le escriba en Espanol nomas regrese esta
10 carta. Se la escribe nuevo. My husband and I were recently at
11 Casa Sanchez. The food was quite good and reasonably priced.
12 We were both surprised and quite pleased with the patio. Who
13 would have thought that some place in the Mission could have
14 such a patio. Huge and beautiful. Must be absolutely great in
15 good weather. That part of our experience was super. But there
16 are some problems that need your immediate attention. You see
17 my husband and I use wheelchairs. There needs to be enough
18 room between and around the tables for wheelchairs. There
19 should be at least one table that wheelchairs can fit under.
20 When I went to use the women's restroom the cashier had to
21 move a large planter out of the way. Then when I went to use
22 the restroom it was really hard to use the toilet. There were no
23 grab bars to use so I really struggled to use it. The toilet seemed
24 very low. The sink is not usable in the cabinet. The bathroom
25 is really big so you should be able to easily take care of this. My
26 husband had the same kind of problems with the me's room.
27 Could you look at that restroom also. Thank you."

28 16. On or about April 12, 2011, plaintiff IRMA RAMIREZ returned to CASA
SANCHEZ. Plaintiff IRMA RAMIREZ encountered all the same barriers as on the prior visits.

17. All times stated herein, plaintiffs encountered an inaccessible counter which was
too high at the CASA SANCHEZ.

1 18. Therefore, at said time(s) and place, plaintiff IRMA RAMIREZ and plaintiff
2 DAREN HEATHERLY, each a person with a disability, encountered the following inaccessible
3 elements of the subject CASA SANCHEZ, which constituted architectural barriers and a denial
4 of the proper and legally-required access to a public accommodation to persons with physical
5 disabilities including, but not limited to:

- 6 a. lack of an accessible entrance due to excessive door pressure;
- 7 b. lack of an accessible service counter;
- 8 c. lack of two (2) handicapped-accessible unisex restroom(s); and
- 9 d. On personal knowledge, information and belief, other public facilities and
10 elements too numerous to list were improperly inaccessible for use by
 persons with physical disabilities.

11 19. At all times stated herein, the existence of architectural barriers at defendants'
12 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
13 with the Americans with Disabilities Act of 1990 either then, now or in the future.

14 20. On or about February 3, 2011, defendant(s) were sent two (2) letters by or on
15 behalf of plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY advising of their need
16 to take immediate action to remove architectural barriers and requesting a written response upon
17 receipt of his/her letter, promising to immediately remove the barriers and providing a date when
18 that would be accomplished. Said letters are attached hereto collectively as exhibit "A" and
19 incorporated by reference as though fully set forth herein. Defendants' failure to respond
20 evidenced an intent not to seek or engage in an early and reasonable resolution of the matter.

21 21. At all times stated herein, defendants, and each of them, did not act as reasonable
22 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
23 removing architectural barriers that would foreseeably prevent plaintiff IRMA RAMIREZ from
24 receiving the same goods and services as able bodied people and some of which may and did pose
25 a threat of harm and/or personal injury to people with disabilities.

1 22. At all times stated herein, defendants, and each of them, did not act as reasonable
2 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
3 removing architectural barriers that would foreseeably prevent plaintiff DAREN HEATHERLY
4 from receiving the same goods and services as able bodied people and some of which may and did
5 pose a threat of harm and/or personal injury to people with disabilities.

6 23. As a legal result of defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ;
7 and FANTE, INC. 's failure to act as a reasonable and prudent public accommodation in
8 identifying, removing or creating architectural barriers, policies, practices and procedures that
9 denied access to each plaintiff and other persons with disabilities, each plaintiff suffered the
10 damages as alleged herein.

11 24. As a result of the denial of equal access to defendants' facilities due to the acts and
12 omissions of defendants, and each of them, in owning, operating and maintaining these subject
13 public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil rights, including
14 but not limited to rights under Civil Code §§54, 54.1 and 54.3.

15 25. As a result of the denial of equal access to defendants' facilities due to the acts and
16 omissions of defendants, and each of them, in owning, operating and maintaining these subject
17 public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff's civil rights,
18 including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

19 26. Further, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY suffered
20 emotional distress, mental distress, mental suffering, mental anguish, which includes, but is not
21 limited to, shame, humiliation, embarrassment, anger, disappointment and worry, expectedly and
22 naturally associated with a person with physical disabilities being denied access, all to his/her
23 damages as prayed hereinafter in an amount within the jurisdiction of this court.

24 No claim is being made for mental and emotional distress over and above that usually associated
25 with the discrimination and physical injuries claimed, and no expert testimony regarding this
26 usual mental and emotional distress will be presented at trial in support of the claim for damages.

1 27. Defendants', and each of their, failure to remove the architectural barriers
2 complained of herein created, at the time of plaintiff IRMA RAMIREZ and plaintiff DAREN
3 HEATHERLY's first visit to said public accommodation, and continues to create continuous and
4 repeated exposure to substantially the same general harmful conditions which caused plaintiff
5 IRMA RAMIREZ and plaintiff DAREN HEATHERLY harm as stated herein.

6 28. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each was denied
7 his/her rights to equal access to a public facility by defendants MARTHA SANCHEZ; ROBERT
8 C. SANCHEZ; and FANTE, INC., because defendants MARTHA SANCHEZ; ROBERT C.
9 SANCHEZ; and FANTE, INC. maintained a restaurant without access for persons with physical
10 disabilities to its facilities, including but not limited to the entrance, counter, men's restroom and
11 women's restroom, and other public areas as stated herein, and continue to the date of filing this
12 complaint to deny equal access to each plaintiff and other persons with physical disabilities in
13 these and other ways.

14 29. On information and belief, construction alterations carried out by defendants have
15 also triggered access requirements under both California law and the Americans with Disabilities
16 Act of 1990.

17 30. Each plaintiff, as described hereinbelow, seeks injunctive relief to require the
18 CASA SANCHEZ to be made accessible to meet the requirements of both California law and the
19 Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants
20 operate CASA SANCHEZ as a public facility.

21 31. Plaintiff IRMA RAMIREZ seeks damages for violation of her civil rights for visits
22 on January 20, 2011, April 5, 2011 and April 12, 2011 and plaintiff DAREN HEATHERLY
23 seeks damages for violation of his civil rights for visits on January 20, 2011 and April 5, 2011.

1 Each plaintiff seeks statutory damages of not less than \$4,000, pursuant to Civil Code §52(a) or
2 alternatively \$1000 pursuant to Civil Code §54.3, for each day after his/her visit that the trier of
3 fact (court/jury) determines was the date that some or all remedial work should have been
4 completed under the standard that the landlord and tenant had an ongoing duty to identify and
5 remove architectural barriers where it was readily achievable to do so, which deterred plaintiff
6 IRMA RAMIREZ and plaintiff DAREN HEATHERLY from returning to the subject public
7 accommodation because of his/her knowledge and/or belief that neither some or all architectural
8 barriers had been removed and that said premises remains inaccessible to persons with disabilities
9 whether a wheelchair user or otherwise.

10 32. On information and belief, defendants have been negligent in their affirmative duty
11 to identify the architectural barriers complained of herein and negligent in the removal of some or
12 all of said barriers.

13 33. Because of defendants' violations, each plaintiff and other persons with physical
14 disabilities are unable to use public facilities such as those owned and operated by defendants on a
15 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
16 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
17 other accessibility law as plead herein. Each plaintiff seeks an order from this court compelling
18 defendants to make the CASA SANCHEZ accessible to persons with disabilities.

19 34. On information and belief, defendants have intentionally undertaken to modify and
20 alter existing building(s), and have failed to make them comply with accessibility requirements
21 under the requirements of ADAAG and California Building Code.

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1 The acts and omission of defendants, and each of them, in failing to provide the required
2 accessible public facilities at the time of each plaintiff's visit and injuries, indicate actual and
3 implied malice toward each plaintiff, and despicable conduct carried out by defendants, and each
4 of them, with a willful and conscious disregard for the rights and safety of each plaintiff and other
5 similarly situated persons, and justify a trebling of damages as provided by Civil Code §§52(a)
6 and 54.3, in order to make a more profound example of defendants, and each of them, to other
7 operators and landlords of other restaurants and other public facilities, and to punish defendants
8 and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

9 35. Each plaintiff is informed and believes and therefore alleges that defendants CASA
10 SANCHEZ, and each of them, caused the subject building(s) which constitute the CASA
11 SANCHEZ to be constructed, altered and maintained in such a manner that persons with physical
12 disabilities were denied full and equal access to, within and throughout said building(s) of the
13 CASA SANCHEZ and were denied full and equal use of said public facilities. Furthermore, on
14 information and belief, defendants have continued to maintain and operate said restaurant and/or
15 its building(s) in such conditions up to the present time, despite actual and constructive notice to
16 such defendants that the configuration of CASA SANCHEZ and/or its building(s) is in violation
17 of the civil rights of persons with physical disabilities, such as plaintiff IRMA RAMIREZ,
18 plaintiff DAREN HEATHERLY and other members of the disability community. Such
19 construction, modification, ownership, operation, maintenance and practices of such public
20 facilities are in violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and
21 the ADA, 42 U.S.C. §12101, *et seq.*

1 36. On personal knowledge, information and belief, the basis of defendants' actual and
2 constructive notice that the physical configuration of the facilities including, but not limited to,
3 architectural barriers constituting the CASA SANCHEZ and/or building(s) was in violation of the
4 civil rights of persons with physical disabilities, such as each plaintiff, includes, but is not limited
5 to, communications with invitees and guests, plaintiff IRMA RAMIREZ herself, owners of other
6 restaurants, hotels, motels and businesses, notices they obtained from governmental agencies upon
7 modification, improvement, or substantial repair of the subject premises and other properties
8 owned by these defendants, newspaper articles and trade publications regarding the Americans
9 with Disabilities Act of 1990 and other access laws, public service announcements by former U.S.
10 Attorney General Janet Reno between 1993 and 2000, and other similar information. Defendants'
11 failure, under state and federal law, to make the CASA SANCHEZ accessible is further evidence
12 of defendants' conscious disregard for the rights of plaintiffs and other similarly situated persons
13 with disabilities. Despite being informed of such effect on each plaintiff and other persons with
14 physical disabilities due to the lack of accessible facilities, defendants, and each of them,
15 knowingly and willfully refused to take any steps to rectify the situation and to provide full and
16 equal access for each plaintiff and other persons with physical disabilities to the CASA
17 SANCHEZ. Said defendants, and each of them, have continued such practices, in conscious
18 disregard for the rights of each plaintiff and other persons with physical disabilities, up to the date
19 of filing of this complaint, and continuing thereon. Defendants had further actual knowledge of
20 the architectural barriers referred to herein by virtue of the demand letter addressed to the
21 defendants and served concurrently with the summons and complaint. Said conduct, with
22 knowledge of the effect it was and is having on plaintiffs and other persons with physical
23 disabilities, constitutes despicable conduct in conscious disregard of the rights and safety of each
24 plaintiff and of other similarly situated persons, justifying the imposition of treble damages per
25 Civil Code §§52 and 54.3.

37. Plaintiff IRMA RAMIREZ, plaintiff DAREN HEATHERLY and the disability community, consisting of persons with disabilities, would, could and will return to the subject public accommodation when it is made accessible to persons with disabilities.

I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)

(On behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS, inclusive)
(42 U.S.C. §12101, *et seq.*)

38. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 37 of this complaint.

39. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

40. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

1 41. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
 2 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
 3 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
 4 accommodations identified for purposes of this title was:

5 (7) PUBLIC ACCOMMODATION - The following private
 6 entities are considered public accommodations for purposes of this
 title, if the operations of such entities affect commerce -

7 ---

8 (B) a restaurant, bar or other establishment serving food or
 9 drink.

10 42 U.S.C. §12181(7)(B)

11 42. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against
 12 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
 13 privileges, advantages, or accommodations of any place of public accommodation by any person
 14 who owns, leases, or leases to, or operates a place of public accommodation."

15 43. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
 16 42 U.S.C. §12182(b)(2)(a) are:

17 (I) the imposition or application of eligibility criteria
 18 that screen out or tend to screen out an individual with a disability
 19 or any class of individuals with disabilities from fully and equally
 20 enjoying any goods, services, facilities, privileges, advantages, or
 accommodations, unless such criteria can be shown to be necessary
 for the provision of the goods, services, facilities, privileges,
 advantages, or accommodations being offered;

21 (ii) a failure to make reasonable modifications in
 22 policies, practices, or procedures, when such modifications are
 23 necessary to afford such goods, services, facilities, privileges,
 24 advantages or accommodations to individuals with disabilities,
 25 unless the entity can demonstrate that making such modifications
 26 would fundamentally alter the nature of such goods, services,
 27 facilities, privileges, advantages, or accommodations;

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(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of each plaintiff's rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

44. The removal of the barriers complained of by plaintiffs as hereinabove alleged were at all times after January 26, 1992 "readily achievable" as to the subject building(s) of CASA SANCHEZ pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

1 45. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
2 accomplishable and able to be carried out without much difficulty or expense.” The statute
3 defines relative “expense” in part in relation to the total financial resources of the entities
4 involved. Each plaintiff alleges that properly repairing, modifying, or altering each of the items
5 that plaintiffs complains of herein were and are “readily achievable” by the defendants under the
6 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
7 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to
8 make the required services available through alternative methods which were readily achievable.

9 46. On information and belief, construction work on, and modifications of, the subject
10 building(s) of CASA SANCHEZ occurred after the compliance date for the Americans with
11 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of
12 the ADA.

13 47. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
14 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
15 Act of 1964, 42 U.S.C. 2000(a)-3(a), as each plaintiff is being subjected to discrimination on the
16 basis of disability in violation of this title or have reasonable grounds for believing that plaintiff is
17 about to be subjected to discrimination in violation of §302. Each plaintiff is deterred from
18 returning to or making use of the public facilities complained of herein so long as the premises
19 and defendants’ policies bar full and equal use by persons with physical disabilities.

20 48. 42 U.S.C. 12188 (a)(1) states: “Nothing in this section shall require a person with a
21 disability to engage in a futile gesture if such person has actual notice that a person or
22 organization covered by this title does not intend to comply with its provisions.” Pursuant to this
23 section, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each has not returned to
24 defendants’ premises since on or about April 12, 2011, but on information and belief, alleges that
25 defendants have continued to violate the law and deny the rights of each plaintiff and of other
26 persons with physical disabilities to access this public accommodation.

Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title."

49. Each plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Each plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.
(On Behalf of Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY, and
Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC.,
a California Corporation dba CASA SANCHEZ FOODS, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

50. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 49 of this complaint.

51. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

1 52. California Civil Code §54.1 provides that persons with disabilities shall not be
2 denied full and equal access to places of public accommodation or facilities:

3 (a)(1) Individuals with disabilities shall be entitled to full
4 and equal access, as other members of the general public, to
5 accommodations, advantages, facilities, medical facilities, including
6 hospitals, clinics, and physicians' offices, and privileges of all
7 common carriers, airplanes, motor vehicles, railroad trains,
8 motorbuses, streetcars, boats, or any other public conveyances or
9 modes of transportation (whether private, public, franchised,
licensed, contracted, or otherwise provided), telephone facilities,
adoption agencies, private schools, hotels, lodging places, places of
public accommodation, amusement or resort, and other places to
which the general public is invited, subject only to the conditions
and limitations established by law, or state or federal regulation, and
applicable alike to all persons.

10 Civil Code §54.1(a)(1)

11 53. California Civil Code §54.1 further provides that a violation of the Americans with
12 Disabilities Act of 1990 constitutes a violation of section 54.1:

13 (d) A violation of the right of an individual under the
14 Americans with Disabilities Act of 1990 (Public Law 101-336) also
15 constitutes a violation of this section, and nothing in this section
shall be construed to limit the access of any person in violation of
that act.

16 Civil Code §54.1(d)

17 54. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a person
18 within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by
19 the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific
20 architectural barrier which defendants knowingly and willfully fail and refuse to remove
21 constitutes a separate act in violation of Civil Code §§54 and 54.1. Each plaintiff has been and
22 continue to be denied full and equal access to defendants' CASA SANCHEZ. As a legal result,
23 each plaintiff is entitled to seek damages pursuant to a court or jury determination, in accordance
24 with California Civil Code §54.3(a) for each day on which he/she visited or have been deterred
25 from visiting the CASA SANCHEZ because of his/her knowledge and belief that the restaurant is
26 inaccessible to persons with disabilities.

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1 California Civil Code §54.3(a) provides:

2 Any person or persons, firm or corporation, who denies or interferes
3 with admittance to or enjoyment of the public facilities as specified
4 in Sections 54 and 54.1 or otherwise interferes with the rights of an
5 individual with a disability under Sections 54, 54.1 and 54.2 is
6 liable for each offense for the actual damages and any amount as
7 may be determined by a jury, or the court sitting without a jury, up
8 to a maximum of three times the amount of actual damages but in
9 no case less than . . .one thousand dollars (\$1,000) and . . .
10 attorney's fees as may be determined by the court in addition
11 thereto, suffered by any person denied any of the rights provided in
12 Sections 54, 54.1 and 54.2.

13 Civil Code §54.3(a)

14 55. On or about January 20, 2011, April 5, 2011 and April 12, 2011, plaintiff IRMA
15 RAMIREZ and plaintiff DAREN HEATHERLY on each of their respective visits as stated herein
16 suffered violations of Civil Code §§54 and 54.1 in that plaintiff IRMA RAMIREZ and plaintiff
17 DAREN HEATHERLY each was denied access to the entrance, counter, men's restroom and
18 women's restroom and other public facilities as stated herein at the CASA SANCHEZ and on the
19 basis that plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each was a person with
20 physical disabilities.

21 56. As a result of the denial of equal access to defendants' facilities due to the acts and
22 omissions of defendants, and each of them, in owning, operating and maintaining these subject
23 public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil rights, including
24 but not limited to rights under Civil Code §§54, 54.1 and 54.3.

25 57. As a result of the denial of equal access to defendants' facilities due to the acts and
26 omissions of defendants, and each of them, in owning, operating and maintaining these subject
27 public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff's civil rights,
28 including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

58. Further, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each
suffered mental distress, mental suffering, mental anguish, which includes shame, humiliation,
embarrassment, frustration, anger, disappointment and worry, all of which are expectedly and
naturally associated with a denial of access to a person with physical disabilities, all to each
plaintiff's damages as hereinafter stated.

1 Defendants' actions and omissions to act constituted discrimination against each plaintiff on the
2 sole basis that each plaintiff is a person or an entity that represents persons with physical
3 disabilities and unable, because of the architectural barriers created and maintained by the
4 defendants in violation of the subject laws, to use the public facilities hereinabove described on a
5 full and equal basis as other persons.

6 59. Each plaintiff has been damaged by defendants', and each of their, wrongful
7 conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of
8 each plaintiff's rights as a person or an entity that represents persons with physical disabilities on
9 or about January 20, 2011, April 5, 2011 and April 12, 2011, and on a continuing basis since then,
10 including statutory damages, a trebling of all of actual damages, general and special damages
11 available pursuant to §54.3 of the Civil Code according to proof.

12 60. As a result of defendants', and each of their, acts and omissions in this regard,
13 each plaintiff has been required to incur legal expenses and hire attorneys in order to enforce each
14 plaintiff's rights and enforce the provisions of the law protecting access for persons with physical
15 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
16 the provisions of Civil Code §54.3, each plaintiff therefore will seek recovery in this lawsuit for
17 all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
18 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also
19 to compel the defendants to make their facilities accessible to all members of the public with
20 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
21 the provisions of §1021.5 of the Code of Civil Procedure.

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2 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
3 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**
4 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY and
5 Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC.,
6 a California Corporation dba CASA SANCHEZ FOODS, inclusive)
7 (Health & Safety Code §19955, *et seq.*)

8 61. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
9 allegations contained in paragraphs 1 through 60 of this complaint.

10 62. Health & Safety Code §19955 provides in pertinent part:

11 The purpose of this part is to insure that public accommodations or
12 facilities constructed in this state with private funds adhere to the
13 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
14 of Title 1 of the Government Code. For the purposes of this part
15 “public accommodation or facilities” means a building, structure,
16 facility, complex, or improved area which is used by the general
17 public and shall include auditoriums, hospitals, theaters, restaurants,
18 hotels, motels, stadiums, and convention centers. When sanitary
19 facilities are made available for the public, clients or employees in
20 such accommodations or facilities, they shall be made available for
21 the handicapped.

22 63. Health & Safety Code §19956, which appears in the same chapter as §19955,
23 provides in pertinent part, “accommodations constructed in this state shall conform to the
24 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
25 Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
26 public accommodations constructed or altered after that date. On information and belief, portions
27 of the CASA SANCHEZ and/or of the building(s) were constructed and/or altered after July 1,
28 1970, and substantial portions of the CASA SANCHEZ and/or the building(s) had alterations,
structural repairs, and/or additions made to such public accommodations after July 1, 1970,
thereby requiring said restaurant and/or building to be subject to the requirements of Part 5.5,
§19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions
per Health & Safety Code §19959.

64. Pursuant to the authority delegated by Government Code §4450, *et seq*, the State Architect promulgated regulations for the enforcement of these provisions. Effective July 1, 1982, Title 24 of the California Building Standards Code adopted the California State Architect's Regulations and these regulations must be complied with as to any alterations and/or modifications of CASA SANCHEZ and/or the building(s) occurring after that date. Construction changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant to the "ASA" requirements, the American Standards Association Specifications, A117.1-1961. On information and belief, at the time of the construction and modification of said building, all buildings and facilities covered were required to conform to each of the standards and specifications described in the American Standards Association Specifications and/or those contained in the California Building Code.

65. Restaurants such as the CASA SANCHEZ are "public accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq*.

66. As a result of the actions and failure to act of defendants, and as a result of the failure to provide proper and legally handicapped-accessible public facilities, each plaintiff was denied plaintiff's rights to full and equal access to public facilities and suffered a loss of each plaintiff's civil rights and each plaintiff's rights as a person with physical disabilities to full and equal access to public facilities.

67. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard, each plaintiff has been required to incur legal expenses and hire attorneys in order to enforce each plaintiff's civil rights and enforce provisions of the law protecting access for the persons with physical disabilities and prohibiting discrimination against the persons with physical disabilities, and to take such action both in each plaintiff's own interests and in order to enforce an important right affecting the public interest. Each plaintiff, therefore, seeks in this lawsuit the recovery of all reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure §1021.5.

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Each plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953 and Civil Code §§54.3 and/or in the alternative, each plaintiff will seek attorneys' fees, costs and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).

Each plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

68. Each plaintiff seeks injunctive relief for an order compelling defendants, and each of them, to make the subject place of public accommodation readily accessible to and usable by persons with disabilities.

IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS, inclusive)
(Civil Code §51, 51.5)

69. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 68 of this complaint.

70. Defendants' actions and omissions and failure to act as a reasonable and prudent public accommodation in identifying, removing and/or creating architectural barriers, policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The Unruh Act provides:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or **disability** are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any
 2 construction, alteration, repair, structural or otherwise, or
 3 modification of any sort whatsoever, beyond that construction,
 4 alteration, repair, or modification that is otherwise required by other
 5 provisions of law, to any new or existing establishment, facility,
 6 building, improvement, or any other structure . . . nor shall anything
 7 in this section be construed to augment, restrict, or alter in any way
 8 the authority of the State Architect to require construction,
 9 alteration, repair, or modifications that the State Architect otherwise
 10 possesses pursuant to other . . . laws.

11 A violation of the right of any individual under the
 12 Americans with Disabilities Act of 1990 (Public Law 101-336) shall
 13 also constitute a violation of this section.

14 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 15 "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the
 16 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 17 failing to act to identify and remove barriers can be construed as a "negligent per se" act of
 18 defendants, and each of them.

19 71. The acts and omissions of defendants stated herein are discriminatory in nature and
 20 in violation of Civil Code §51.5:

21 No business establishment of any kind whatsoever shall
 22 discriminate against, boycott or blacklist, refuse to buy from, sell to,
 23 or trade with any person in this state because of the race, creed,
 24 religion, color, national origin, sex, or **disability** of the person or of
 25 the person's partners, members, stockholders, directors, officers,
 26 managers, superintendents, agents, employees, business associates,
 27 suppliers, or customers.

28 As used in this section, "person" includes any person, firm
 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

Nothing in this section shall be construed to require any
 construction, alteration, repair, structural or otherwise, or
 modification of any sort whatsoever, beyond that construction,
 alteration, repair or modification that is otherwise required by other
 provisions of law, to any new or existing establishment, facility,
 building, improvement, or any other structure . . . nor shall anything
 in this section be construed to augment, restrict or alter in any way
 the authority of the State Architect to require construction,
 alteration, repair, or modifications that the State Architect otherwise
 possesses pursuant to other laws.

1 72. Defendants' acts and omissions as specified have denied each plaintiff full and
2 equal accommodations, advantages, facilities, privileges and services in a business establishment,
3 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
4 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A
5 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
6 Law 101-336) shall also constitute a violation of this section."

7 Each plaintiff accordingly incorporates the entirety of his/her above cause of action for violation
8 of the Americans with Disabilities Act at §38, *et seq.*, as if replied herein.

9 73. As a result of the denial of equal access to defendants' facilities due to the acts and
10 omissions of defendants, and each of them, in owning, operating and maintaining these subject
11 public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil rights,
12 including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

13 74. As a result of the denial of equal access to defendants' facilities due to the acts and
14 omissions of defendants, and each of them, in owning, operating and maintaining these subject
15 public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff's civil rights,
16 including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

17 75. Further, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each
18 suffered mental distress, mental suffering, mental anguish, which includes shame, humiliation,
19 embarrassment, frustration, anger, disappointment and worry, all of which are expectedly and
20 naturally associated with a denial of access to a person with physical disabilities, all to each
21 plaintiff's damages as hereinafter stated. Defendants' actions and omissions to act constituted
22 discrimination against each plaintiff on the sole basis that each plaintiff is a person or an entity
23 that represents persons with physical disabilities and unable, because of the architectural barriers
24 created and maintained by the defendants in violation of the subject laws, to use the public
25 facilities hereinabove described on a full and equal basis as other persons.

1 76. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY are entitled
 2 to the rights and remedies of §52(a) of the Civil Code, including trebling of actual damages
 3 (defined by §52(h) of the Civil Code to mean “special and general damages”), as well as to
 4 reasonable attorneys’ fees and costs, as is allowed by statute, according to proof if deemed to be
 5 the prevailing party.

6 **PRAYER:**

7 Plaintiffs pray that this court award damages and provide relief as follows:

8 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
 9 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 10 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

(On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, each an
 11 individual and Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and
 12 FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS, inclusive)
 (42 U.S.C. §12101, *et seq.*)

13 1. For injunctive relief, compelling defendants MARTHA SANCHEZ; ROBERT C.
 14 SANCHEZ; and FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS
 15 , inclusive, to make the CASA SANCHEZ, located at 2778 24TH Street, San Francisco, California,
 16 readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and
 17 to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to
 18 afford full access to the goods, services, facilities, privileges, advantages and accommodations
 19 being offered.

20 2. For attorneys’ fees, litigation expenses and costs of suit, if plaintiffs are deemed
 21 the prevailing party; and

22 3. For such other and further relief as the court may deem proper.
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1 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
 2 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
 3 **AND 54.3, ET SEQ.**

4 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, each an
 5 individual and Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and
 6 FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS, inclusive)
 7 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

8 1. For injunctive relief, compelling defendants MARTHA SANCHEZ; ROBERT C.
 9 SANCHEZ; and FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS
 10 , inclusive, to make the CASA SANCHEZ, located at 2778 24TH Street, San Francisco, California,
 11 readily accessible to and usable by individuals with disabilities, per state law.

12 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for
 13 each occasion on which plaintiffs were deterred from returning to the subject public
 14 accommodation.

15 3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5,
 16 if plaintiffs are deemed the prevailing party;

17 4. Treble damages pursuant to Civil Code §54.3;

18 5. General damages according to proof;

19 6. For all costs of suit;

20 7. Prejudgment interest pursuant to Civil Code §3291; and

21 8. Such other and further relief as the court may deem just and proper.

22 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE**
 23 **SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE**
 24 **§19955, ET. SEQ.**

25 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, each an
 26 individual and Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and
 27 FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS, inclusive)
 28 (Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants MARTHA SANCHEZ; ROBERT C.
 SANCHEZ; and FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS
 , inclusive, to make the CASA SANCHEZ, located at 2778 24TH Street, San Francisco, California,
 readily accessible to and usable by individuals with disabilities, per state law.

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2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,
alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, each an individual and Against Defendants MARTHA SANCHEZ; ROBERT C. SANCHEZ; and FANTE, INC., a California Corporation dba CASA SANCHEZ FOODS, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the prevailing party;

3. General damages according to proof;

4. Treble damages pursuant to Civil Code §52(a);

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- 1 5. For all costs of suit;
- 2 6. Prejudgment interest pursuant to Civil Code §3291; and
- 3 7. Such other and further relief as the court may deem just and proper.

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5 Dated: 5/27/11, 2011

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

6

7

8 By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiff IRMA RAMIREZ and Plaintiff
DAREN HEATHERLY

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11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

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15 Dated: 5/27/11, 2011

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

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17

18 By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiff IRMA RAMIREZ and Plaintiff
DAREN HEATHERLY

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Exhibit A

Irma Ramirez
734 Morton Way
Santa Rosa, CA 95404

February 3, 2011

Casa Sanchez
Attn: Manager
2778 24th Street
San Francisco, Ca 94110

Dear Manager of Casa Sanchez:

Si desea que le escriba en Espanol nomas regrese esta carta. Se la escribe nuevo.

My husband and I were recently at Casa Sanchez. The food was quite good and reasonably priced. We were both surprised and quite pleased with the patio. Who would have thought that some place in the Mission could have such a patio. Huge and beautiful. Must be absolutely great in good weather.

That part of our experience was super. But there are some problems that need your immediate attention. You see my husband and I use wheelchairs.

There needs to be enough room between and around the tables for wheelchairs. There should be at least one table that wheelchairs can fit under. When I went to use the women's restroom the cashier had to move a large planter out of the way.

Then when I went to use the restroom it was really hard to use the toilet. There were no grab bars to use so I really struggled to use it. The toilet seemed very low. The sink is not usable in the cabinet. The bathroom is really big so you should be able to easily take care of this.

My husband had the same kind of problems with the me's room. Could you look at that restroom also. Thank you.

Sincerely



Irma Ramirez

Irma Ramirez
734 Morton Way
Santa Rosa, CA 95404

February 3, 2011

Casa Sanchez
Attn: Owner of Building
2778 24th Street
San Francisco, Ca 94110

Dear Owner of Building for Casa Sanchez:

Si desea que le escriba en Espanol nomas regrese esta carta. Se la escribe nuevo.

My husband and I were recently at Casa Sanchez. The food was quite good and reasonably priced. We were both surprised and quite pleased with the patio. Who would have thought that some place in the Mission could have such a patio. Huge and beautiful. Must be absolutely great in good weather.

That part of our experience was super. But there are some problems that need your immediate attention. You see my husband and I use wheelchairs.

There needs to be enough room between and around the tables for wheelchairs. There should be at least one table that wheelchairs can fit under. When I went to use the women's restroom the cashier had to move a large planter out of the way.

Then when I went to use the restroom it was really hard to use the toilet. There were no grab bars to use so I really struggled to use it. The toilet seemed very low. The sink is not usable in the cabinet. The bathroom is really big so you should be able to easily take care of this.

My husband had the same kind of problems with the me's room. Could you look at that restroom also. Thank you.

Sincerely



Irma Ramirez